

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

LUIS DUBÓN-OTERO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 05-1549 (JAF)

(Crim. No. 97-091)

O R D E R

Petitioner, Luis Dubón-Otero, requests a certificate of appealability from this court to appeal our denial on August 25, 2005, of his 28 U.S.C. § 2255 petition. Docket Document No. 13; see 28 U.S.C. § 2253(c)(2) (1994 & Supp. 2005). A certificate of appealability may be granted only upon a substantial showing of the denial of a constitutional right. 28 U.S.C. §§ 2253(c)(2) and (3).

Upon reviewing the record, we find Petitioner's claim entirely insubstantial. As we stated in our August 25, 2005 order, we never intimated a willingness to depart from the guidelines before or after Booker v. United States, 125 S. Ct. 738 (2005), was decided. Docket Document No. 13. As our interest in adhering to the sentencing guidelines in this case is unaffected by whether or not they are mandatory, Booker offers Petitioner no relief. Accordingly, we **DENY** Petitioner's request for a certificate of appealability.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 16th day of November, 2005.

s/ José Antonio Fusté
JOSE ANTONIO FUSTE
Chief U. S. District Judge